January 28, 2018

**BY EMAIL AND US MAIL**

PARENT

ADDRESS

ADDRESS

Gary Carpenter, Superintendent

Fern Ridge School District

88834 Territorial Road

Elmira, OR 97437

Tony Scurto, Superintendent

Lane Education Service District

1200 Highway 99 North

Eugene, OR 97402

Cheryl Zwillinger, Riverfront School and Career Center Director

Looking Glass Administration

1790 W 11th Avenue, Suite 200

Eugene, OR 97402

Dear PARENT, Superintendents Carpenter and Scurto, and Director Zwillinger:

This letter is the final order on the December 18, 2018, appeal filed by PARENT (Parent) alleging that Fern Ridge School District violated the following administrative rule:

* OAR 581-022-2505, establishing duties with respect to the approval and annual evaluation of public and private alternative education programs by school districts.

The objective of this order is to determine whether the district is in compliance with the administrative rule and, if necessary, specify corrective action to be completed by the district.

## I. Division 22 Standards and Appeals

At the direction of the Legislative Assembly of the State of Oregon, the State Board of Education has established educational standards that every school district must implement.[[1]](#footnote-1) Those standards, known as Division 22 Standards, are set forth in OAR Chapter 581, Division 22.

School districts must comply with Division 22 Standards. If a parent or guardian of a student or a person who resides in a school district believes the district is not in compliance with a Division 22 Standard, the person may file a complaint with the district. Following a final decision by the school district, the person may appeal the Division 22 complaint to the Oregon Department of Education using the process set forth in OAR 581-002-0040.

If the department conducts an investigation and determines that a school district is out of compliance with a Division 22 Standard, the district must submit to the department a plan for becoming compliant with the standard.[[2]](#footnote-2) The Director of the Oregon Department of Education must approve the plan.

A noncompliant school district is required to be back in compliance before the beginning of the following school year.[[3]](#footnote-3) If the director determines that a deficiency cannot be corrected before the beginning of the next school year, the director may allow an extension of time to demonstrate compliance, not to exceed 12 months.[[4]](#footnote-4) If the school district fails to show compliance within the required time, the director may withhold state school funds.[[5]](#footnote-5)

## II. Procedural Background

On August 28, 2018, Parent met with Fern Ridge School District and alleged that Looking Glass Riverfront School and Career Center unlawfully denied her daughter (Student) enrollment in the school for the 2018-2019 school year. The district discussed with Parent her options. However, the district did not process her complaint as a formal complaint against the district or the school.

On October 4, 2018, Parent sent an email to the district, specifying that she was filing a written complaint. The district responded to Parent on November 26, 2018, stating that it had “responded to [her] grievance” and that the grievance process had “ended” following the August 28th meeting.

On November 13, 2018, Parent filed a complaint with Lane County Service District, making the same allegation that Looking Glass Riverfront School and Career Center unlawfully denied Student enrollment in the school. The education service district did not accept Parent’s complaint because it believed that it did not have the legal authority to hear her complaint.

On November 26, 2018, Parent filed an appeal with the Oregon Department of Education. On December 18, 2018, the department accepted Parent’s appeal pursuant to OAR 581-002-0040(2)(a)(A), under which the department may accept an appeal if a complainant has exhausted a school district’s complaint process. In this case, Parent received a final decision from both Fern Ridge School District and Lane County Service District. Fern Ridge School District expressly waived its complaint process when it communicated to Parent that her grievance process had ended. Lane County Service District expressly waived its complaint process when it communicated to Parent that it did not have the legal authority to hear her complaint.

## III. Findings of Fact

1. Student attended Looking Glass Riverfront School and Career Center during the 2017-2018 school year.
2. Looking Glass Riverfront School and Career Center is a private alternative education program registered with the Oregon Department of Education.
3. The school decided after the 2017-2018 school year to deny Student enrollment in the school for the 2018-2019 school year for reasons pertaining to the Student’s behavior and lack of attendance.
4. On August 28, 2018, Parent went to the school to determine what she needed to do to prepare Student for the upcoming 2018-2019 school year. During the visit, the school informed Parent that it was denying Student enrollment in the school.
5. On August 28, 2018, Parent met with Fern Ridge School District and alleged that the school unlawfully denied Student enrollment. The district discussed with Parent her options. However, the district did not process her complaint as a formal complaint against the district or the school.
6. On October 4, 2018, Parent sent an email to the district, specifying that she was filing a written complaint. The district responded to Parent on November 26, 2018, stating that it had “responded to [her] grievance” and that the grievance process had “ended” following the August 28th meeting.
7. On November 13, 2018, Parent filed a complaint with Lane County Service District, making the same allegation that the school unlawfully denied Student enrollment. The education service district did not accept Parent’s complaint.
8. Fern Ridge School District has a contact with the school to provide education services to students who reside in the district.
9. Fern Ridge School District coordinates with Lane County Service District to conduct an annual review of private alternative education programs that offer educational services to students who reside in the district. After Lane County Service District conducts the annual review, it notifies Fern Ridge School District which private alternative education programs have met all applicable requirements, thereby providing Fern Ridge School District with notice that it may enter into contracts with those programs for the provision of education services during the upcoming school year.

## IV. Legal Standard and Arguments Presented

Under ORS 336.615, an alternative education program is “a school or separate class group designed to best serve students’ educational needs and interests and assist students in achieving the academic standards of the school district and the state.”

Under ORS 336.625(3), the State Board of Education by rule:

(a) Shall define the accountable activities and allowable credit for these activities in alternative education programs;

(b) Shall adopt a process for registering private alternative education programs that includes, but is not limited to, the requirements of ORS 336.631; and

(c) Shall establish standards for private alternative education programs to ensure a safe educational environment and an instructional program that provides students with the opportunity to make progress toward achieving state academic content and performance standards.

Under this statute, the board has the duty to adopt rules ensuring that private alternative education programs – as opposed to public alternative education programs – meet the requirements set forth in ORS 336.631 and other standards adopted by the board for the purpose of ensuring such programs meet state academic content and performance standards.

Whereas ORS 336.625(3) imposes a duty on the State Board of Education, ORS 336.631(1) imposes a duty on school districts. Under ORS 336.631(1), before entering into a contract with or distributing public funds to a private alternative education program, a school district must:

(a) Annually approve the private alternative education program;

(b) Determine that the private alternative education program is registered with the Department of Education; and

(c) Determine that the private alternative education program complies with the requirements of subsection (2) of this section and ORS 336.625 (3)(c).

As seen above, school districts must annually approve private alternative education programs and determine that such programs meet the requirements set forth in ORS 336.631(2) and other standards adopted by the State Board of Education pursuant to ORS 336.025(3)(c) for the purpose of ensuring such programs meet state academic content and performance standards.

Under ORS 336.631(2), private alternative education programs that are registered with Department of Education are subject to the following laws:

(a) Federal law;

(b) ORS 181A.195, 326.603, 326.607 and 342.223 (criminal records checks);

(c) ORS 329.496 (physical education);

(d) ORS 337.150, 339.141, 339.147 and 339.155 (tuition and fees);

(e) ORS 659.850, 659.855 and 659.860 (discrimination);

(f) ORS 339.122 (advertisement requirements);

(g) Health and safety statutes and rules; and

(h) Any statute, rule or school district policy that is specified in a contract between the school district board and the private alternative education program.

Private alternative education programs are not subject to all of the laws to which public schools are subject. As seen above, private alternative education programs are subject to applicable federal law, state laws pertaining to criminal records checks, physical education, tuition, fees, advertisement requirements, and discrimination, applicable health and safety laws, and any law to which a private alternative education program must adhere pursuant to a contract that it has with a school district. Importantly, a private alternative education program is subject to only these laws and any standards adopted by the State Board of Education pursuant to ORS 336.625(3)(c).

To fulfill its duty under ORS 336.625(3)(c), the State Board of Education adopted OAR 581-022-2505. Under that rule, “school districts must adopt policies and procedures for the approval and at least annual evaluation of public and private alternative education programs.”[[6]](#footnote-6) Under OAR 581-022-2505(3)(b), those policies and procedures must provide that:

(b) Before contracting with or distributing any public school funds to a private alternative education program, the [school] district must document that:

(A) The program is registered with the Oregon Department of Education (ODE) under the provisions of OAR 581-021-0072 by receiving a copy of the Department's written notice that the program's registration is approved for the current school year;

(B) The ODE has assigned the private alternative program an institution identification number;

(C) Before contracting with or distributing any public school funds to any private alternative education program for special education services identified in a child's IEP, the program is approved by the Department in compliance with OAR 581-015-2270;

(D) The program complies with the individual education plan for each student who is eligible to receive special education services;

(E) An education plan and education profile that meet the requirements of OAR 581-022-2000 are designed and implemented with each student in the program;

(F) The education plan includes criteria for determining if, when, where, and how the student may transition from the alternative program;

(G) A transportation plan is in place ensuring that the program is accessible to each student approved for placement in the program;

(H) The program assists the district in meeting its comprehensive K-12 instructional program in compliance with OAR 581-022-2030;

(I) The program assures that it provides an instruction based on academic content standards adopted by the State Board of Education and that students participate in district and state assessments of achievement for the grade level(s) the program serves;

(J) The program assists students in earning diploma credits consistent with OAR 581-022-2000, 581-022-2010 and 581-022-2020;

(K) The program collects and reports to the district each student's local and state assessment, attendance, behavior, graduation, dropout, and other data required by the district and the state;

(L) Student data is included in the district's at least annual evaluation of the program;

(M) The program complies with federal law; and

(N) If applicable, the private alternative education program is in compliance with its existing district contract.

It should be noted that OAR 581-022-2505(3)(b) does not require school districts to ensure that private alternative education programs are in compliance with all Division 22 standards. The rule requires school districts to ensure that private alternative education programs are in compliance with certain rules related to district curriculum, diploma requirements, academic content standards, and the collection and reporting of assessment, attendance, behavior, graduation, and dropout data.[[7]](#footnote-7)

In her appeal, Parent argues that Looking Glass Riverfront School and Career Center unlawfully denied Student enrollment in the school for the 2018-2019 school year because the school did not properly notify her or Student of the denial. Parent also argues that Fern Ridge School District should have processed either the complaint that she made at the August 28th meeting or in the October 4th email as a formal complaint.

In its response, the Fern Ridge School District argues that OAR 581-022-2505 requires school districts only to conduct an annual evaluation of private alternative education programs. The district argues that the rule does not require school districts to receive complaints originating at such programs.

Fern Ridge School District also explains, “the annual review of private alternative education programs are coordinated through [Lane County Service District].” Fern Ridge School District explains that after Lane County Service District conducts an annual review, it notifies Fern Ridge School District which private alternative education programs have met all applicable requirements, thereby providing Fern Ridge School District with notice that it may enter into contracts with those programs for the provision of education services during the upcoming school year. Fern Ridge School District submits that because Lane County Service District performs this function for Fern Ridge School District, Lane County Service District has assumed any duty that Fern Ridge School District has to receive complaints originating at private alternative education programs.

Finally, Fern Ridge School District also argues that even if it has the duty to receive complaints originating at private alternative education programs, its oversight is limited to those laws and rules listed in ORS 336.631(2) and OAR 581-022-2505. The district argues that rules pertaining to suspension and expulsion are not rules listed in ORS 336.631(2) or OAR 581-022-2505 and, thus, not part of any duty that it has with respect to private alternative education programs.

1. **Whether Fern Ridge School District is required to receive complaints originating in a private alternative education program**

In response to Parent’s appeal, Fern Ridge School District argues that that OAR 581-022-2505 only requires school districts to conduct an annual evaluation of private alternative education programs. The district further argues that because OAR 581-022-2505 does not require school districts to receive complaints originating at private alternative education programs, school districts are not required to receive such complaints. The district is correct insofar as OAR 581-022-2505 does not require school districts to receive complaints originating at private alternative education programs. OAR 581-022-2505 establishes duties that school districts have with respect to certain laws and rules that apply to private alternative education programs. However, OAR 581-022-2505 is not the only source of law or rule that applies to school districts with respect to parents and students who might attend such programs.

Under OAR 581-022-2370, “[e]ach school district must establish a process for the prompt resolution of a complaint by a person who resides in the district or by any parent or guardian of a student who attends school in school district.” The rule does not differentiate between types of schools. The rule specifies that the complaint process must be available for “a person who resides in the district or by any parent or guardian of a student who attends school in school district.” Thus, for purposes of this appeal, the questions are whether Parent or Student “resides” in Fern Ridge School District or whether Looking Glass Riverfront School and Career Center is in the “school district.”

Parent and Student both reside is Fern Ridge School District. Therefore, the complaint procedure required by OAR 581-022-2370 applies to them.

It should be noted that there is a strong legal reason for finding that the complaint procedure required by OAR 581-022-2370 applies to students who reside in a school district and attend a private alternative education program. Under the law pertaining to alternative education programs, “[s]tudents participating in alternative education programs are considered to be the responsibility of the resident district for purposes of ORS 332.072.”[[8]](#footnote-8) Under that statute, “district school boards have control of the district schools and are responsible for educating children residing in the district.”[[9]](#footnote-9) Part of educating students is receiving complaints from them or their parents.[[10]](#footnote-10) Thus, within the legal context of the law pertaining to alternative education programs, a school district’s complaint procedure should be available to students who reside in the school district and attend such programs.

It should also be noted that there are strong policy reasons for finding that the complaint procedure required by OAR 581-022-2370 applies to students who reside in a school district and attend a private alternative education program. A school district is responsible for annually reviewing a private alternative education program with whom it has contracted and for determining whether the program is compliant with certain laws and rules before distributing public funds to it.[[11]](#footnote-11) In order for a school district to properly review a private alternative education program, or in order to properly determine whether a private alternative education program is compliant with applicable laws and rules, the school district necessarily must receive complaints originating in the program.

Furthermore, under statute, private alternative education programs are subject to “[a]ny statute, rule or school district policy that is specified in a contract between the school district board and the . . . program.”[[12]](#footnote-12) Similarly, under rule, “[b]efore contracting with or distributing any public school funds to a private alternative education program . . . [a school] district must document that . . . the private alternative education program is in compliance with its existing district contract.”[[13]](#footnote-13) In order for a school district to determine whether a private alternative education program is fulfilling the terms of a contract that it has with the program, the school district necessarily must receive complaints originating in the program.

In consideration of the applicable laws and rules, the Oregon Department of Education finds that Fern Ridge School District is required to receive Parent’s complaint.

In making its finding, the department does not want to imply that a school district must adopt a certain type of complaint process. A school district is free to adopt any complaint process that it deems fitting to the types of complaints originating in private alternative education programs.[[14]](#footnote-14) A school district could adopt a complaint process whereby it first determines whether it has a duty with respect to the subject of the complaint pursuant to ORS 336.631 or OAR 581-022-2505. If the school district determines that it does not have a duty with respect to the subject of the complaint, the school district may dismiss the complaint. If the school district determines that it does have a duty with respect to the subject of the complaint, the school district may institute any process that it deems appropriate to fulfill its duties under ORS 336.631 and OAR 581-022-2505. Those duties involve annual review of private alternative education programs, not direct oversight of such programs. Accordingly, a school district is free to design a complaint process specifically tailored to assist it accomplish its duty to conduct the annual review.

1. **Whether Lane County Service District has assumed any duty that Fern Ridge School District has to receive complaints originating at private alternative education programs**

In response to Parent’s appeal, Fern Ridge School District explains, “the annual review of private alternative education programs are coordinated through [Lane County Service District].” Fern Ridge School District explains that after Lane County Service District conducts an annual review, it notifies Fern Ridge School District which private alternative education programs have met all applicable requirements, thereby providing Fern Ridge School District with notice that it may enter into contracts with those programs for the upcoming school year. Fern Ridge School District submits that because Lane County Service District performs this function for Fern Ridge School District, Lane County Service District has assumed any duty that Fern Ridge School District has to receive complaints originating at private alternative education programs.

The Oregon Department of Education disagrees with the district. The applicable statutes and rules in this case apply to school districts that have entered into a contract with a private alternative education program.[[15]](#footnote-15) And even though it makes practical sense for Lane County Service District to receive complaints originating at Looking Glass Riverfront School and Career Center because the education service district coordinates the review of private alternative education programs for Fern Ridge School District, the education service district is not legally obligated to perform that function. Lane County Service District has not entered into a contract with Fern Ridge School District under which the education service district receives complaints originating at private alternative education programs.

A school district may delegate its duty to receive complaints originating at private alternative education programs to an education service district. However, to do so, a school district would have to make the delegation pursuant to a contract. In this case, Lane County Service District has a practice of annually reviewing private alternative education programs; however, that practice fails to substantiate a delegation of duty to receive complaints originating at such programs. First, the education service district’s practice of annually reviewing private alternative education programs is not conducted pursuant to a contract. Second, even if the practice was conducted pursuant to a contract, the practice does not assume receiving complaints. To properly delegate its duty to receive complaints originating at a private alternative education program, a school district would have to contract with an education service district to perform the specific duty of receiving complaints.

In consideration of the applicable laws and rules, the Oregon Department of Education finds that Lane County Service District has not assumed any duty that Fern Ridge School District has to receive complaints originating at private alternative education programs.

1. **Whether rules pertaining to suspension and expulsion are part of any duty that Fern Ridge School District has with respect to private alternative education programs**

In her appeal, Parent argues that Looking Glass Riverfront School and Career Center unlawfully denied Student enrollment in the school for the 2018-2019 school year because the school did not properly notify her or Student of the denial. Parent argues that the school effectively expelled Student in violation of OAR 581-021-0070.

In its response to Parent’s appeal, Fern Ridge School District argues that with respect to complaints originating in private alternative education programs, its oversight is limited to those laws and rules listed in ORS 336.631(2) and OAR 581-022-2505. The district argues that rules pertaining to suspension and expulsion are not rules listed in ORS 336.631(2) or OAR 581-022-2505 and, thus, not part of any duty that it has with respect to private alternative education programs.

The Oregon Department of Education agrees with the district. Other than ORS 336.631 and OAR 581-021-2505, there is no statute or rule that imposes a duty on a school district with respect to private alternative education programs. And neither ORS 336.631 nor OAR 581-021-2505 requires a school district to ensure compliance with laws and rules pertaining to expulsion.[[16]](#footnote-16)

In consideration of the applicable laws and rules, the Oregon Department of Education finds that rules pertaining to suspension and expulsion are not a part of any duty that Fern Ridge School District has with respect to private alternative education programs.

## VI. CONCLUSION

The Oregon Department of Education finds that Fern Ridge School District did not violate OAR 581-022-2505.

If you have any questions, do not hesitate to contact me.

Sincerely,

Mark Mayer

Complaint and Appeals Coordinator

Office of Government and Legal Affairs

Mark.Mayer@state.or.us

503-947-0464

1. ORS 326.051. [↑](#footnote-ref-1)
2. ORS 327.103(3). [↑](#footnote-ref-2)
3. ORS 327.103(2). [↑](#footnote-ref-3)
4. ORS 327.103(3)(a). [↑](#footnote-ref-4)
5. ORS 327.103(2). [↑](#footnote-ref-5)
6. OAR 581-022-2505(1). [↑](#footnote-ref-6)
7. OAR 581-022-2505 does not list all of the laws and rules to which a private alternative education program must adhere. OAR 581-021-0072—which sets forth the criteria for registering private alternative education programs—lists other laws and rules to which a private alternative education program must adhere. OAR 581-022-2505 specifically pertains to school districts. School districts have a duty to ensure that private alternative education programs are adhering to the laws and rules listed in OAR 581-022-2505. In contrast, OAR 581-021-0072 specifically pertains to private alternative education programs. School districts do not have a duty to ensure that private alternative education programs are adhering to the laws and rules listed in OAR 581-021-0072, except to the extent that those laws and rules are also listed in ORS 336.631(2). [↑](#footnote-ref-7)
8. ORS 336.625(2). [↑](#footnote-ref-8)
9. ORS 332.072. [↑](#footnote-ref-9)
10. *See* ORS 327.103(1). Under this statute, school districts are required to have a complaint process “pertaining to whether a school in the district is a standard school.” ORS 327.006 defines “standard school” to mean a school meeting the standards set by the rules of the State Board of Education. Rules setting forth standards are codified in OAR Chapter 581, Division 22. They are commonly referred to as “Division 22 standards.” *See also* ORS 339.303 (directing the State Board of Education to adopt rules under which “an organization or individual” may “submit to the Superintendent of Public Instruction a written, signed complaint alleging that a public education program is violating or has violated” restraint and seclusion law) and ORS 659.850 (directing the State Board of Education to “establish rules necessary to ensure compliance with” Oregon’s anti-discrimination statute). [↑](#footnote-ref-10)
11. 336.631(1)(a) and (c). [↑](#footnote-ref-11)
12. ORS 336.631(2)(h). [↑](#footnote-ref-12)
13. OAR 581-022-2505(3)(b). [↑](#footnote-ref-13)
14. *See* OAR 581-022-2370 (requiring school districts to “establish a process for the prompt resolution of a complaint by a person who resides in the district or by any parent or guardian of a student who attends school in the school district). This rule only requires a school district’s complaint process to meet three criteria. Under the rule, a school district’s complaint process must:

    (a) Be in writing available at the main administrative office and, if the school district has a website, in a form available on the home page of the school district’s website;

    (b) Include the name of the person, position, or office within the school district with the responsibility for responding to the complaint; and

    (c) Specify the time period during which the complaint will be addressed and a final decision issued. If the complaint procedure has multiple steps, the procedure must establish the time period for each step as well as the overall time period for completing the complaint procedure.

    OAR 581-022-2370(2). Otherwise, a school district is free to design any complaint process that meets its specific needs. [↑](#footnote-ref-14)
15. *See* ORS 336.631(1) (establishing duties for school districts for purposes of entering into a contract with a private alternative education program or distributing funds to a private alternative education program with whom the school district has contracted); *see also* OAR 581-022-2505(3)(b) (establishing duties for school districts for purposes of entering into a contract with a private alternative education program or distributing funds to a private alternative education program with whom the school district has contracted). [↑](#footnote-ref-15)
16. Furthermore, neither ORS 336.631(2) (subjecting private alternative education programs to certain laws) nor OAR 581-021-0072 (setting forth the criteria for registering private alternative education programs) require private alternative education programs to comply with laws and rules pertaining to expulsion. In other words, there is no law or rule under which a student attending a private alternative education program has a right to receive notice of being denied enrollment in the upcoming school year. [↑](#footnote-ref-16)